

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
FINAL UTILITY ORDERS
Selected for Publication
May 2002

May 20, 2002

In the Matter of the Investigation Into

DOCKET NO. UT-003022

U S WEST COMMUNICATIONS, INC.'s¹

DOCKET NO. UT-003040

Compliance with Section 271 of the
Telecommunications Act of 1996

THIRTY-THIRD SUPPLEMENTAL ORDER
DENYING IN PART AND GRANTING IN
PART QWEST'S PETITION FOR
RECONSIDERATION OF THE THIRTIETH
SUPPLEMENTAL ORDER

In the Matter of

U S WEST COMMUNICATIONS, INC.'s

Statement of generally Available Terms
Pursuant To Section 252(f) of the
Telecommunications Act of 1996

Qwest must amend the Qwest Performance Assurance Plan ("QPAP") to reflect that force majeure events should not apply to parity standards. ¶78

Qwest must make available its monthly performance reports to all the parties to the proceeding, including Public Counsel. ¶87.

The Commission affirms the principle that the QPAP should not be the sole remedy available to Competitive Local Exchange Carriers ("CLECs") for poor performance by Qwest, but clarifies that if a CLEC elects an alternative remedy, it must divest itself of any payments received under the QPAP. ¶66.

¹ US West Communications and GTE have merged and are now known as Qwest. The order refers to US West as Qwest throughout.

May 22, 2002

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

NEW ACCESS COMMUNICATIONS,
LLC.,

Respondent.

DOCKET NO. UT-010161

ORDER APPROVING IN PART AND
REJECTING IN PART SETTLEMENT
AGREEMENT

The Commission may reject a settlement agreement which provides for imposition of suspended penalties triggered solely by a Commission's Staff determination that new slamming violations had occurred because such a settlement agreement may constitute improper delegation of Commission authority to Staff; may preclude an opportunity for the respondent to contest future facts before the Commission; and, may eliminate Commission discretion (but not staff discretion) in handling future potential violations in situations that may not merit the level of penalty dictated by the settlement provision. ¶12

The Commission will not categorically exclude suspended penalties as an enforcement tool.
¶13

May 23, 2002

TEL WEST COMMUNICATIONS, LLC.,

Petitioner,

v.

QWEST CORPORATION, INC.,

Respondent.

DOCKET NO. UT-013097

ORDER AFFIRMING IN PART AND
REVERSING IN PART RECOMMENDED
DECISION

Parties to an administrative proceeding must have notice of the contentions they must face. ¶24; *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed 2d 287, 90 S.Ct. 1101 (1970).

The parties must receive notice of the issues in an administrative adjudication. An order based on a hearing where there was inadequate notice of opportunity to be heard is void. Notice is required as to each issue. ¶25; *RCW 34.05.434*; *Esmeiu v. Shrag*, 88 Wn 2d 490, 563 P. 2d 203 (1977); *McDaniel v. DSHS*, 51 Wn. App. 893, 756 P. 2d 143 (1988).

When the original complaint and petition, the first amended petition, and the Commission's notices of hearing made no mention of a question of bad faith negotiations, the sources of law prohibiting bad faith negotiations, or the potential consequences for negotiation in bad faith, and when the parties did not present evidence, arguments or briefs on the issue of bad faith negotiations, there is insufficient notice of the issue under the Constitution and the State APA, and the Commission will not consider the matter. ¶23-31.

The further parties seek to take a dispute from the narrow parameters defined in the governing regulation or law, the more difficult it is to make the fluid of the litigation fit within the vessel provided for it. ¶33.

May 23, 2002

FOCAL COMMUNICATIONS
CORPORATION OF WASHINGTON,

Petitioner,

v.

VERIZON NORTHWEST, INC.

Respondent.

DOCKET NO. UT-013019

ORDER STRIKING IN PART VERIZON'S
COMPLIANCE FILING

The Commission will reject those portions of a compliance filing which contain additional or extraneous matter, including additional terms of agreement or legal arguments, beyond what the Commission has ordered to be filed. ¶20-23.

May 29, 2002

In the Matter of the Investigation Into

U S WEST COMMUNICATIONS, INC.'s

Compliance with Section 271 of the
Telecommunications Act of 1996

DOCKET NO. UT-003022

DOCKET NO. UT-003040

THIRTY-FOURTH SUPPLEMENTAL ORDER
REGARDING QWEST'S COMPLIANCE WITH
COMMISSION ORDERS

In the Matter of

U S WEST COMMUNICATIONS, INC.'s

Statement of Generally Available Terms
Pursuant

To Section 252(f) of the
Telecommunications Act of 1996

The Commission determines that Qwest's Statement of Generally Available Terms ("SGAT") is in compliance with prior Commission orders except for some provisions the Commission mandates modifications of the proposed SGAT language to comply with Commission orders.

Qwest must modify the SGAT to allow the use of direct trunked transport facilities to connect the Qwest serving wire center to the Point of Interconnection ("POI"), if the POI is located at a Qwest tandem switch (¶17); to address situations where the POI is at a tandem switch

and entrance facilities charges would not apply between the POI and the Qwest serving wire center nearest to the Competitive Local Exchange Carrier ("CLEC") switch (§18); to simplify SGAT language, by removing references to specific different types retail service for which parity is required (§32); to make available to CLECs copies of right-of-way agreements Qwest has entered into with private parties (§42); to provide CLECs access to all back office information pertaining to loop qualification accessible to any Qwest personnel, within the same time intervals Qwest provides the information to its own retail personnel (§57); to make clear that the retail parity standard applies to the time interval during which information must be provided to CLECs, not the actual information to be provided (§66); to allow CLECs to request an audit of Qwest's company records, back office systems and data bases pertaining to loop information (§67); to provide CLECs with the same access to back office information pertaining to loop qualification in the same manner as any Qwest employee, though after the information is provided it may then be submitted in mediated form and Qwest may recover the reasonably incurred costs (§74); to delete SGAT language that conflicts with the provision indicating Qwest will not disconnect a number until after 11:59 p.m. of the day following the due date for disconnection (§105); to include information, such as performance standards being used to determine intervals, as well as definitions of the terms used in the standards and descriptions of how intervals will be calculated, in the information provided regarding actual service intervals for service to unaffiliated parties and to Qwest and its affiliates (§§119-125); and, to clarify conflicting information provided as to

whether Qwest can separate out performance data concerning the provisioning of special access circuits to itself and its affiliates, as well as to competitors (§127).

May 31, 2002

In the Matter of the Petition of

VERIZON NORTHWEST, INC.,

For Waiver of WAC 480-120-071(2)(a)

DOCKET NO. UT-011439

ORDER GRANTING MOTION TO JOIN
QWEST AS A PARTY

The Commission has the authority to prescribe exchange area boundaries. §28; *RCW 80.36.230*.

When it is unclear how the authority to prescribe exchange boundaries will be invoked and a party has a significant stake in the outcome since it has an exchange boundary in common with the original petitioner, its facilities are closer to an applicant for service than the applicant's exchange provider and its costs to serve the applicant may be less than those of the exchange provider, the party is properly joined in a proceeding where such issues are to be addressed. §28; Washington Superior Court Civil Rule 19.

The Commission will join all interested parties in order to best exercise its regulatory authority in deciding issues related to providing telephone service to remote areas and determining whether to alter exchange boundaries to facilitate service in such areas. §29.

The Commission may proceed in an adjudication to decide a matter when the validity of a rule on the issue may be in doubt.

¶30; *Washington Independent Telephone Association v. WUTC*, __ Wn. App. ___, 39 P. 3d 342 (Div. II 2002).